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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/043,016	01/08/2002	Rolf Gotz	20496-315	6114
21890	7590	05/25/2004	EXAMINER	
PROSKAUER ROSE LLP PATENT DEPARTMENT 1585 BROADWAY NEW YORK, NY 10036-8299			CHIN, PAUL T	
			ART UNIT	PAPER NUMBER
			3652	

DATE MAILED: 05/25/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/043,016	GOTZ ET AL.	
	Examiner	Art Unit	
	PAUL T. CHIN	3652	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 18 February 2004.
- 2a) ☒ This action is FINAL.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-8, 10-14, 16 and 17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 11-14, 16 and 17 is/are rejected.
- 7) ☒ Claim(s) 10 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 08 January 2002 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. The amendment filed February 18, 2004, and the arguments presented therewith have been carefully considered and they are persuasive in light of amendments. Therefore, the rejection made has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of the Germany Patent (DE 909,393), Mickelson (1,441,737) (see Paper No. 7), Garrett (5,103,755) (see Paper 7), Eggeman (3,002,780) (see Paper No. 7), Gale (2,793,904) (Paper No. 7), and Randen et al. (4,492,399).

Claims 1-3,5-8,11,13, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by the Germany Patent (DE 909,393). Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over the Germany Patent (DE 909,393) in view of Eggeman (3,002,780) (see Paper No. 7) and Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Germany Patent (DE 909,393) in view of Randen et al. (4,492,399). Moreover, Claims 1-3 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by Mickelson (1,441,737) (see Paper No. 7). Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mickelson's lifting device (1,441,737) in view of Garrett (5,103,755) (see Paper No. 7) and Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Mickelson's lifting device (1,441,737) in view of Gale (2,793,904) (Paper No. 7). However, Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims (Note that applicant cancelled claims 9 and 15). A final office action follows as below.

### *Drawings*

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: "*force absorbing surface*" (claim 7). A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

### *Specification*

3. Applicant is reminded of the proper language and format for an abstract of the disclosure.

The abstract should be in narrative form and generally limited to a single paragraph on a separate sheet within the range of 50 to 150 words. It is important that the abstract not exceed 150 words in length since the space provided for the abstract on the computer tape used by the printer is limited. **The form and legal phraseology often used in patent claims, such as "means" and "said," should be avoided.** The abstract should describe the disclosure sufficiently to assist readers in deciding whether there is a need for consulting the full patent text for details.

The language should be clear and concise and should not repeat information given in the title. It should avoid using phrases which can be implied, such as, "The disclosure concerns," "The disclosure defined by this invention," "The disclosure describes," etc.

4. The following title is suggested: DEVICE FOR ADJUSTING THE EFFECTIVE LENGTH OF A SLING AND FOR LIFTING LOADS.

### *Claim Rejections - 35 USC § 102*

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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6. Claims 1-3,5-8,11,13, and 14 are rejected under 35 U.S.C. 102(b) as being anticipated by the Germany Patent (DE 909,393).

Re claims 1 and 13, the Germany Patent (DE 909,393) discloses a device for substantially adjusting the effective length of a sling during transport of a load (see Fig. 2), the sling as a continuous loop connecting a lifting device (see Figs. 1 and 2) with the load, the device comprising a carrier part (b,c,d,e) (see Figs. 1-4) having projections (a, a) located at each of two opposed spaced sides, each of the projections supporting a segment of the sling, and the carrier part further having a substantially U-shaped opening (see between inwardly facing members C, C) through which a loop segment of the sling is guided (see Fig. 2) wherein the respective segments of the sling which link the load to the lifting device are coupled to the lifting device (see Fig. 2).

Re claim 2, the Germany Patent's device (DE 909,393) shows that the projections (a, a) are hook-shaped (see Figs. 1-4).

Re claim 3, the Germany Patent's device (DE 909,393) also shows each projection (a) having a recess (see Figs. 1-4) to guide the sling.

Re claim 5, the Germany Patent's device (DE 909,393) shows that the projections (a, a) are being essentially arranged in a shared horizontal plane (see Figs. 1-4).

Re claims 6,11, and 14, the Germany Patent's device (DE 909,393) also shows in figure 4 two upper inwardly facing members (see Fig. 4), which can be considered as a deflection element, designed as a substantially U-shaped hook, in the area *between* the projections (a, a) for deflecting an additional or upper segment of the sling.

Re claim 7, the substantially U-shaped deflection element (located at the uppermost portion of carrier part) (Fig. 4) is attached to the upper portion of *the cross-shaped* carrier part at an upper end surface, which can be considered as *a force-absorbing surface (for absorbing the forces from sling)*, located *in a plane situated above* the projections (a, a) in the operating position of the device (see Fig. 4).

Re claim 8, the Germany Patent's device (DE 909,393) further shows that the U-shaped deflection element and the projections (a, a) are arranged symmetrically to a middle axis of the carrier part (see Fig. 4).

7. Claims 1-3 and 5 are rejected under 35 U.S.C. 102(b) as being anticipated by **Mickelson (1,441,737)** (see Paper No. 7).

**Mickelson (1,441,737)** discloses a device for lifting and transporting a load (13), the device comprising a carrier part (see Fig. 1) having projections (3,4) located at each of two opposed spaced sides, each of the projections supporting a segment of the sling, and the carrier part further having an opening (5,6) through which a loop segment of the sling (11,12) is guided (see Fig. 3).

Re claim 2, Mickelson's lifting device (1,441,737) shows that the projections (3,4) are hook-shaped (see Figs. 1-4).

Re claim 3, Mickelson's lifting device (1,441,737) also shows each projection (3,4) having a recess (see Fig. 1) to guide the sling.

Re claim 5, Mickelson's lifting device (1,441,737) shows that the projections (3,4) are being essentially arranged in a shared horizontal plane (see Figs. 1 and 3). It is pointed

out that Mickelson's lifting device (1,441,737) contains all the structural elements as recited in the above claims 1-3 and 5 while the intended use (i.e. *for substantially adjusting the effective length of a sling during transport of a load, said sling being as a continuous loop*) is not patentably significant.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over **the Germany Patent (DE 909,393)** in view of **Eggeman (3,002,780)** (see Paper No. 7).

The Germany Patent's device (DE 909,393), as presented in section 6 above, does not show that the device is fabricated as *a single piece via forging*.

However, Eggeman (3,002,780) shows a hook device to lift a load by a sling wherein the device is being made of *a single piece via forged steel* (see Col 2, lines 10-13).

Accordingly, it would have been obvious to those skilled in the art to fabricate the German's supporting device as *a single piece via forging* as taught by Eggeman (3,002,780) in order to provide as a single and reliable supporting device and also as an alternative simple and inexpensive method of fabrication.

10. Claims 16 and 17 are rejected under 35 U.S.C. 103(a) as being unpatentable over **the Germany Patent (DE 909,393)** in view of **Randen et al. (4,492,399)**.

**The Germany Patent's device (DE 909,393)**, as presented in section 6 above, contains all the structural elements as recited in the claims 16 and 17 except the sling *being made of a textile band folded or woven into a circular loop or a continuous rope*.

However, **Randen et al. (4,492,399)** shows a continuous lifting sling (5) (see Figs. 1 and 7) being made of *synthetic textile webbing* (Col 4, lines 4-5) or made of *a webbing material of polyester yarn* (Col 5, lines 7-9).

Accordingly, it would have been obvious to one of the ordinary skilled in the art at the time the invention was made to provide *the sling made of a textile webbed or woven sling* on the Germany Patent's device as taught by Randen et al. (4,492,399) to provide a lighter and reliable lifting sling or rope.

11. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Mickelson's lifting device (1,441,737)** in view of **Garrett (5,103,755)** (see Paper No. 7).

Mickelson's lifting device (1,441,737), as presented in section 7 above, shows the U-shaped projections (3,4), but does not show *markings* on the projections to denote a critical angle of the segment of the sling.

However, **Garrett (5,103,755)** shows a U-shaped hook having *exhibit markings* (14,16,18,17, and 19) (Figs. 1-9) to indicate the angularity of the sling or chains for safety. Accordingly, it would have been obvious to one of the ordinary skilled in the art at the time the invention was made to provide *markings* at the surface of the U-shaped projections (3,4) of Mickelson's lifting device (1,441,737) as taught by Garrett (5,103,755) in order to indicate the critical angularity of the sling for safety.



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12. Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over **Mickelson's lifting device (1,441,737)** in view of **Gale (2,793,904)** (Paper No. 7).

**Mickelson's lifting device (1,441,737)**, as presented in section 7 above, does not show that the device is fabricated as *a single piece via forging*.

However, **Gale (2,793,904)** clearly shows a lifting device being made of *a single piece adapted to be forged or cast* (see Col 1, lines 34-50).

Accordingly, it would have been obvious to those skilled in the art to fabricate the Mickelson's lifting device as *a single piece via forging* as taught by Gale in order to provide the device as one piece that is simple, rugged in construction, and inexpensive to manufacture (see Col 1, lines 45-50).

#### ***Allowable Subject Matter***

13. Claim 10 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. It is pointed out that the Germany Patent's device (DE 909,393) or Mickelson's lifting device (1,441,737), does not show *an opening of the carrier part wherein the deflection element is pivoted* (as shown in figure 2 of the invention).

#### ***Response to Arguments***

14. Applicant's arguments with respect to claims 1-8, 10-14, 16, and 17 have been considered but are moot in view of the new ground(s) of rejection.

For the sake of an argument, the sling (10) of Mickelson's lifting device (1,441,737) can also be substantially considered as a continuous loop as shown in figure 3. The figure 3

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is shown as one purpose of illustrations. Mickelson's lifting device is also "capable of being used to form a great many sling hitches or loops" (see Col 1, lines 39-44).

Moreover, for the sake of further argument, Mickelson's lifting device (1,441,737) contains all the structural elements as recited in the above claims 1-3 and 5 while the intended use (i.e. *for substantially adjusting the effective length of a sling during transport of a load, said sling being as a continuous loop*) is not patentably significant. It is also pointed out that a recitation of the intended use of the claimed invention must result in a structural difference between the claimed invention and the prior art in order to patentably distinguish the claimed invention from the prior art. If the prior art structure is capable of performing the intended use, then it meets the claim. In a claim drawn to a process of making, the intended use must result in a manipulative difference as compared to the prior art. See *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963).

### ***Conclusion***

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Curtis (D376,095), Conley et al. (4,007,808), and Giffin (1,361,249) show a rope hook. Johnson (4,200,325) shows a textile woven continuous loop or sling.

16. Applicant's amendment (*the additions of new limitations in claims 1 and 13 in combinations with other structural limitations*) necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAUL T. CHIN whose telephone number is (703) 305-1524. The examiner can normally be reached on MON-THURS (7:30 -6:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, EILEEN LILLIS can be reached on (703) 308-3248. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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Examiner

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